

REMARKS/ARGUMENTS

The Office Action dated September 8, 2005 (the "Office Action") has been received and carefully noted. Claim 7 has been amended.

Claims 2, 4 and 7 were objected to for informalities. Appropriate corrections have been made.

Claims 1-7 have been rejected by the Examiner under 35 U.S.C. 103(a) as being obvious over U.S. Patent 6,540,791 (Dias) in view of U.S. Patent 4,857,306 (Roller). Applicant respectfully submits that the Examiner has not established a *prima facie* case of obviousness. In order to establish a *prima facie* case of obviousness: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference; (2) there must be a reasonable expectation of success; and (3) the references when combined must teach or suggest all the claim limitations. MPEP 2142.

Dias is directed to alkaline bleaching compositions which provide improved performance of bleaching agents and increased shelf-life. Col. 1, Ins. 7-10. These composition contain: (a) an oxidizing agent; (b) a buffering system; (c) a stabilizer; and (d) at least one hair care ingredient selected from the group consisting of surfactants, catalysts, thickeners, conditioners and mixtures thereof. Col. 1, Ins. 10-19. The alkaline bleaching compositions may additionally comprise optional components such as hair coloring agents, diluents, enzyme and anti-oxidants. Col. 31, Ins. 34-36. For example, the alkaline bleaching compositions may include metallic dyes limited to salts of silver, copper, nickel, bismuth, cobalt and manganese. Col. 41, In. 28; Col. 42, Ins. 32-33. The motivation to add metal salts to the alkaline bleaching compositions is not readily apparent from the reference, which merely references that such additions are effective for use in hair care or personal products. Col. 31, In. 33.

Roller is directed to a composition for cosmetic products comprising a liquid, highly viscous or a solid, dermatologically compatible carrier material and a powder of precious stone(s). Col. 1, Ins. 42-45. According to the invention, the composition affords better optical effects. Col. 1, In. 40.

In contrast, independent claim 1 is directed to a water-based hair dye including at least one of an oxidative dye, acidic dye and coloring dye; and a powder of about 0.01% to 20.0% of the weight of the hair dye, said powder comprising a silicon dioxide based poly-element mineral selected from the group consisting of perlite, pitchstone and tourmaline. Thus, while perlite, pitchstone and tourmaline include trace amounts of metal oxides (not metal salts), these compounds consist primarily of silicon dioxide, which is a non-metal white or colorless vitreous insoluble solid. Moreover, the purpose of the addition of the poly-element mineral is to improve the effectiveness of the hair dye by increasing the coloring capacity of the dye, prevent fading after the hair is washed and dried multiple times, decrease irritation of the scalp after the dye has been applied and improve the stability of the dye in the hair, in addition to enhance the feel of the hair when the dyed hair is brushed. Therefore, there is no suggestion or motivation in either Dias or Roller to add a poly-element material to a water-based hair dye. The problems asserted to be solved by the Dias and Roller references, either singly or combined, are entirely independent from those solved by Applicant's invention, thus there is no motivation to combine Dias and Roller. Accordingly, Applicant respectfully submits that independent claim 1 and its dependent claims are allowable over the references cited by the Examiner.

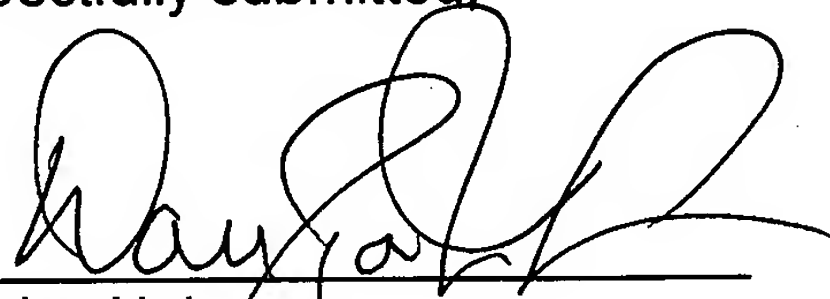
Similarly, claim 6 is directed to a method of enhancing the coloring of hair by a hair dye, the method comprising mixing a water based hair dye with a powder of about 0.01% to 20.0% of the weight of the hair dye, the powder comprising at least one of a silicon dioxide based poly-element mineral selected from the group consisting of perlite, pitchstone or tourmaline; and applying the hair dye and powder composition to hair. There is no suggestion to combine Dias in view of Roller. Thus claim(s) 6 (and 7) are in condition for allowance.

If there are any remaining issues, the Examiner is encouraged to telephone the below-signed counsel for Applicant at (213) 689-5142 to seek to resolve them.

The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 07-1853. Should such

additional fees be associated with an extension of time, Applicant respectfully requests that this paper be considered a petition therefor.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Douglas N. Larson", written over a horizontal line.

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